

Remarks

Applicant hereby responds to the official action mailed April 1, 2011. Concurrently submitted are a Request for Continued Examination (RCE), a Petition for Extension and a Request for Examiner Interview prior to a first official action in the RCE.

Applicant appreciates the Examiner's attention in a telephone call on July 26, 2011, in which it was suggested that applicant consider inserting structural limitations into the claims in lieu of functional ones, as examination is continued. At this stage in proceedings, it was also suggested that applicant might request an interview upon filing this amendment and RCE, which applicant now requests.

Claims 1-3 and 5-20 were rejected as indefinite under 35 U.S.C. §112, second paragraph. In the rejection, it is noted that the claim 1 recited that the hose could be pulled longitudinally out from the feed-through element to a position at which the hose can be retained by a retaining mechanism . . ." This was considered unclear as to whether the retaining mechanism was positively claimed. Claim 1 has been amended to positively recite the retaining mechanism as an element of the claim, and is definite.

Also in the rejection under Section 112, it is stated that the term "longitudinally" is a relative term in claim 1 and is indefinite. Applicant requests reconsideration in view of the claim as amended.

The term "longitudinal" or "longitudinally" specifies an orientation and is referenced to the hose. The common dictionary definition of longitudinal is "placed or running lengthwise." The term "longitudinal," used relative to the hose, is definite, but the term of itself does not specify a forward or backward direction. Applicant has amended the claims to define out and back structurally by reference to the end of the hose carrying the spray or shower head, or more particularly the union nut at the end of

the hose for attaching to the spray head. This structurally defines the invention and distinguishes over the art. Claim 1 is definite.

Claims 1 and 2 were considered inconsistent with respect to whether the retaining mechanism is at or in the feed-through element. The claims as amended state that the retaining mechanism is in the feed-through element. With this change and the foregoing changes, claim 1 is definite. No new matter is presented.

Claims 1-3 and 5-10 were rejected as anticipated by US 6,370,713 – Bosio. Reconsideration is requested in view of this amendment.

It is stated in the official action of April 1, 2011, that the distal end of the feed-through element (2) in Bosio has a retaining mechanism disposed in the feed-through element and actuated manually by action of the feed-through element as claimed, released by pulling on the shower hose and engaged by renewed pulling. As illustrated in the official action, this construction requires one to assume that the direction in which the hose is pulled (or pulled "out" as claimed), is the direction that causes the hose to be retracted under the sink. However, even in that direction, there is no retaining mechanism that is actuated and released by pulling followed by renewed pulling.

The Bosio hose is not provided with a retaining mechanism having a detachable coupling wherein the retaining mechanism is actuated for coupling and decoupling, by manual manipulation of the shower hose that causes the retaining mechanism to engage against the feed-through element, so as to be switched between its arresting and releasing conditions. Bosio has only an abutting end that determines the limit to which the hose can be retracted, namely when the spray head abuts against the distal end of the feed-through element.

Applicant has amended the claims to distinguish over the prior art as interpreted in the official action, and to provide structural limitations that preclude the construction of the claims as found in the official action.

In the official action, it is asserted that Bosio discloses the subject matter of claims 5-20. Applicant submits that all the elements that the official action might possibly construe as these elements are internal to Bosio's shower head, and have no

relation to any retaining mechanism with a coupling arranged to toggle between arresting and releasing states when the user pulls and releases the hose, thereby causing contact between the retaining mechanism and the feed-through element, to switch between such states. Part 6a is the threaded nipple of Bosio's shower head. The official action asserts at page 10 that applicant argued that Bosio's shower head lacks the elements of a retaining mechanism, but admits at page 10 that all the elements of the retaining mechanism, relied upon in support of the rejection for anticipation, namely a sleeve, oblique surface, clamping and guiding action, protruding projection, rotatable connecting link guide, etc., are internal to the shower head.

Applicant's retaining mechanism is structurally defined in the claims as being within the feed-through element and arranged to couple with and to release the hose. Bosio does not anticipate the invention.

Responsive to applicant's argument that Bosio lacks a retaining mechanism, the official action asserts that Bosio's Fig. 1 shows that the shower hose can be pulled out to a position at which the hose can be retained by a retaining mechanism.

Reconsideration is requested: Bosio does not disclose or suggest a coupling/decoupling retaining mechanism in the feed-through element. Bosio does not meet or suggest the invention claimed.

In the discussion of case law, the official action asserts that where there is reason to believe that a functional limitation may be an inherent characteristic of a prior art reference, an applicant is required to prove that the prior art reference does not possess the characteristic relied upon. But there is no reason whatsoever to believe that Bosio has the inherent characteristic of toggling between arresting and releasing the grip with a longitudinally movable hose as claimed.

The Examiner cites *in re Spada*, 15 USPQ2d 1655 (Fed. Cir. 1990), which involved "virtually identical" chemical formulas thereby providing reason to believe that the same formulas had the same properties. Also cited, *In re King*, 231 USPQ 136 (Fed. Cir. 1986), concerns whether it is possible to reject a method claim as anticipated by a disclosed structure of the same type used in the method, in which there was

reason to believe that the *same* structure would produce the same result if subjected to the same conditions. In re Ludtke, 169 USPQ 566 (CCPA 1971) involved a parachute with panels that were relatively sized the *same* as the prior art and would be considered to open in the *same* way under the same conditions. In re Shreiber, 44 USPQ2d 1429 (Fed Cir. 1997) concerned the obviousness of dispensing popcorn from the *same* spout structure known to be useful to dispense oil. Of course if a structure is the *same* as in the prior art, it can be expected to meet the same functions. These cases do not resemble the present case, wherein the Bosio structure lacks any inherent characteristic of toggling between arresting and releasing the grip with a longitudinally movable hose as claimed.

There is nothing intrinsically wrong in defining something by what it does rather than by what it is. While the Patent Office may properly require proof that functional limitations being relied upon are not inherent characteristics of prior art, these potentially distinguishing features cannot be ignored. In re Echard and Watters, 471 F2d 632, 176 USPQ 321 (CCPA 1973).

If the structure is the *same* or nearly the *same* as claimed, there may be reason to inquire. But if the structure disclosed is not the *same* as claimed, one cannot assert that the prior art meets the same functions. There is no support in the present case to believe that Bosio has the *same* structure as defined in the claims as amended and thus inherently has the *same* characteristics as claimed. Bosio does not have a retaining mechanism in a feed through element capable of arresting a hose when pulled out along its length. Every structure cited in Bosio as similar to applicant's structure is carried on the end of the hose within Bosio's shower head and the shower head cannot possibly reside in the feed through element because the shower head is larger than the opening in the feed through element. According to the claimed invention, the retaining mechanism is disposed in the feed-through mechanism.

Applicant has amended claim 1 and a number of the dependent claims in an effort to positively recite structural distinctions over Bosio's shower hose that has no mechanism for or possibility of being controllably arrested at a longitudinal position

along the hose when pulled outwardly. The retaining mechanism is definitely claimed and definitely located in the feed-through element.

Reconsideration and allowance are requested.

Respectfully submitted,

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